



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

January 5, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Amendment of Part 90 of the
Commission's Rules to Facilitate
Future Development of SMR Systems
in the 800 MHz Frequency Band
PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

and

Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding
800 MHz SMR
PP Docket No. 93-253

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

Lisa M. Zaina
General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
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800 MHz SMR)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

OPASTCO
21 Dupont Circle, NW
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COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES

I. INTRODUCTION

On November 4, 1994, the Federal Communications Commission (FCC or Commission) released the text of a Further Notice of Proposed Rulemaking and Notice of Inquiry in the above-captioned proceeding.¹ In this Notice, the Commission proposes a new framework for the licensing of specialized mobile radio (SMR)

¹In the matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, and Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR, PP Docket No. 93-253, Further Notice of Proposed Rulemaking, 59 FR 60111 (November 22, 1994). (Notice)

systems in the 800 MHz band. Of specific importance to the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) is the Commission's proposed treatment of designated entities, particularly rural telephone companies.²

OPASTCO is a national trade association of more than 440 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, are small and rural local exchange carriers (LECs) serving over 2 million customers. OPASTCO's members are interested in providing a wide range of services to their customers and would like the opportunity to have access to the spectrum in the 800 MHz frequency band in order to provide SMR services.

II. COMMENTS

OPASTCO's members pride themselves on providing their customers with high quality services at reasonable rates. They also desire to give their customers, present and future, as many options as possible. Giving the rural LEC in a small community the opportunity to offer new telecommunications services strengthens more than the telephone network in that community.

²Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993) (Budget Act). In authorizing the Commission to use competitive bidding, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."

It makes the network stronger as a whole, and makes high quality services at reasonable rates more widely available.

OPASTCO recognizes that rural LECs are currently ineligible to hold SMR licenses. It, of course, supports the Commission's proposal to eliminate that restriction on wireline carriers.³ Once the FCC has favorably disposed of that threshold issue, it reaches the question of the existence of a federally mandated designated entity.

The FCC states that it wishes to "ensure that we grant licenses to those who value the spectrum most highly and will maximize its use to provide the best quality and variety of service to consumers."⁴ Ensuring that rural LECs have access to this spectrum will satisfy the FCC's desires. Small and rural LECs have an impeccable record of service to their customers and lead the way in the utilization of new technology.

In November 1993, the National Exchange Carrier Association (NECA) conducted a study of 1,194 study areas that participate in the NECA interstate access tariff.⁵ These companies serve mostly

³Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, Notice of Proposed Rule Making, FCC 94-202, adopted August 2, 1994, released August 11, 1994, 59 FR 42563 (August 18, 1994).

⁴Notice at para. 2.

⁵Building the Telecommunications Infrastructure in Rural America, Achievements Toward the Promise", National Exchange Carrier Association, November 1993 (NECA Study). NECA was formed in 1983 at the direction of the FCC. Upon the divestiture of the American Telephone and Telegraph Company (AT&T), the FCC and the LECs faced enormous changes in their respective operating

in rural and remote areas. Their central offices serve a total of approximately seven million access lines in very small markets with low access line density per square mile. The 1993 NECA survey shows that, at the time, over 65 percent of the customers of these companies had equal access, as compared with 35 percent in 1991. Over 91 percent had access to digital switching. Signaling System 7 (SS7) technology had already been made available to more than 40 percent of their subscribers. Over 70 percent of their customers were being served by offices in which fiber had been deployed. These companies have also been placing fiber closer to more of their customers. Clearly, as their record indicates, rural LECs will utilize the spectrum to its fullest potential.

Assuming wireline carriers are allowed entry into SMR, the Commission questions "whether special bidding procedures are necessary to ensure the participation of rural companies in the provision of SMR service because of the relatively modest build-out costs involved to serve rural areas."⁶ OPASTCO is uncertain of the basis for this statement. Bidding and build-out costs are two different costs which are not necessarily directly correlated. OPASTCO does not know what the exact build-out costs would be in the areas served by its members, but does not believe

procedures. NECA was created to support its members and their customers in a variety of services. These include establishing and administering interstate access tariffs, access charge pooling and administering the Universal Service Fund (USF).

⁶Notice at para. 100.

that modest build-out costs⁷ are necessarily preceded by low bids. Certainly, the cost of build-out is a consideration during the bidding process. However, it is not the only consideration when determining the value of the property. If, for example, a rural community is expected to grow significantly over the next five or ten years, this would drive up the bids for the license to serve that area, making it impossible for the rural LEC to be a successful participant in the auction process.

Other variables affecting the rural telephone company's ability to participate in the provision of 800 MHz SMR must also be weighed when determining the need for special bidding provisions. For example, a rural telephone company must repair and maintain towers and other infrastructure over a vast geographic area with rough terrain. Then there are expenses such as advertising which for a large company with numerous licenses and economies of scale may be incidental, but for the small rural company with one license will be considerable. Furthermore, all of these costs will have to be recovered, at least in the short-run, through a small subscriber base.

Even if build-out costs were the only factor in determining the value of a particular service area, OPASTCO questions the Commission's assumption that modest build-out costs would attract modest bids. On the contrary, all other variables equal, areas

⁷ OPASTCO believes that build-out costs may be relatively expensive in some rural areas. However, for the sake of argument, we will engage the Commission's assumption of modest build-out costs.

with modest build-out costs will attract the highest bids because of the expectancy for higher profit margins. In addition, most companies will have a certain amount of capital in which they can afford to allocate to the total cost of providing SMR service (bidding, build-out, equipment, advertising, etc.). Therefore, the expectancy of lower build-out costs for a particular area will give firms more latitude in the amount they can bid, forcing bids to gravitate upwards. Granting special bidding provisions to rural LECs will help to ensure that they can "sit at the table."

The Commission also states that "in view of the fact that rural telephone companies may use their existing infrastructure to support integrated 800 MHz SMR service in their rural service areas, we anticipate that they will have ample opportunity to participate in 800 MHz SMR."⁸ Many of OPASTCO's members believe that the Commission is overestimating the advantages that LECs' wireline networks might afford them in providing wireless services such as SMR. Most LECs built their existing infrastructure long before they had the opportunity to provide wireless services and so, in many cases, the infrastructure may be of little service in the development of a wireless network. In addition, the existing systems of many small, rural LECs will not have the necessary capacity to support an SMR system. These carriers will be faced with substantial conversion costs,

⁸Notice at para. 100.

including new hardware, software, and advanced technology.

Without the benefit of special bidding provisions, many small and rural LECs will find it infeasible to provide SMR to their communities. This would allow deep-pocketed companies wanting to serve numerous service areas to obtain the rural area licenses. Congress specifically sought to avoid such an excessive concentration of licenses by mandating the FCC to disseminate them "among a wide variety of applicants, including small businesses, **rural telephone companies**, and businesses owned by members of minority groups and women"⁹ (emphasis added).

More importantly, local telephone companies have expertise in serving the unique needs of rural communities. In the hands of an outside provider, the rural area license would just be another segment of a broader service area. Only the local telephone company, with its long-term commitment to serving all of the telecommunications needs of its community, can tailor SMR service so that it becomes a part of the community's bridge to the National Information Infrastructure (NII). Providing special benefits to rural telephone companies in the auction for 800 MHz SMR spectrum will help to ensure that rural communities remain "connected" to the rest of America.

III. CONCLUSION

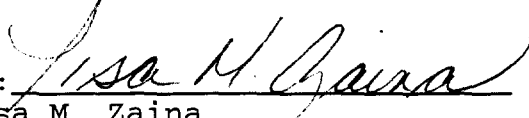
Once the Commission permits wireline carriers to hold SMR licenses, many rural telephone companies will want to provide

⁹Communications Act, 47 U.S.C. § 309(j)(3)(B).

this service to their customers. Unfortunately, many of these LECs will be unable to do so without the assistance of bidding credits and other special provisions. As FCC Chairman Reed Hundt stated in today's Wall Street Journal, without the opportunity to attract capital, entrepreneurs such as rural LECs will not have a chance if forced to bid against the global communications giants that populate today's communications markets.¹⁰ Therefore, OPASTCO urges the FCC to provide rural telephone companies with the full benefits of designated entity status in the auctions for 800 MHz SMR spectrum. In doing so, the Commission will reinforce its commitment to a strong NII by fulfilling its Congressional mandate to insure that rural telephone companies participate in the provision of spectrum-based services.¹¹

Respectfully Submitted,

**THE ORGANIZATION FOR THE
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OF SMALL TELEPHONE COMPANIES**

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January 5, 1995

¹⁰Reed E. Hundt, "No One Gets Handicap in FCC Competition," The Wall Street Journal, January 5, 1995, A15.

¹¹Budget Act at Title VI § 6002(b).